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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1171

NOLLA, GALIB & CO., *Petitioner,*

v.

GERONIMO LEBRON, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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NOLLA, GALIB & CO., *Petitioner,*

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Puerto Rico, entered in the above entitled case on June 14, 1966. A motion for reconsideration was denied on December 23, 1966, and an amended resolution was entered on January 9, 1967.

OPINIONS BELOW

The resolution of the Superior Court of the Commonwealth of Puerto Rico (R. 25) has not been reported, and is printed in Appendix B hereto, *infra,* p. 3a. The opinion of the Supreme Court of Puerto Rico (R. 30) has been unofficially reported by the Bar Association of Puerto Rico, reference number 1963-187. It is printed in Appendix B hereto, *infra,* p. 7a.

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on June 14, 1966. A motion for reconsideration was denied on December 23, 1966. (R. 45) Said resolution denying reconsideration was amended on January 9, 1967. (R. 46) The jurisdiction of this court is invoked under 28 U.S.C. Section 1258,[1] on the following grounds:

1. The question of the applicability of state regulations over federal territory involves a substantial federal question.

2. The decision in question is in conflict with a plurality of decisions of this Court on the subject, and also with decisions of various state courts.

3. The Supreme Court of Puerto Rico has misconstrued an act of Congress (29 U.S.C. 216).

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[1] In the present case, even if the trial court should continue with the litigation, no federal question will arise. *Radio Station WOW, Inc.* v. *Johnson,* 326 U.S. 120 (1945). This Court has adopted a pragmatic approach to the question of what is a final judgment being essential to the achievement of the just, speedy and inexpensive determination of every action. *Brown Shoe Co.* v. *U.S.,* 370 U.S. 294.

QUESTIONS PRESENTED

1) Are the laws of the Commonwealth of Puerto Rico applicable to construction work performed in a naval installation over which the United States has exclusive jurisdiction?

2) Constitutes Section 16 of the Fair Labor Standards Act (29 U.S.C. 216) a retrogression by Congress of its exclusive jurisdiction over certain federal enclaves so as to allow the courts of the Commonwealth of Puerto Rico to take cognizance of a wage claim for work performed within such an area, and to apply local legislation to such work?

STATUTES

The pertinent provisions of the applicable laws are printed in Appendix A, at pages 1a-2a, *infra:* Clause 17, Section 8, Article I of the Constitution of the United States; Public Law of February 16, 1903, of the Legislature of Puerto Rico, Laws, P. 112, (28 L.P.R.A. Section 41.) Fair Labor Standards Act of 1938; (29 U.S.C. Section 216(b)); The Judiciary Act (28 U.S.C. Section 1258).

STATEMENT

This case concerns a wage claim instituted in the Superior Court of Puerto Rico, Humacao Section, for work performed within Roosevelt Roads, a naval installation located in Ceiba, Puerto Rico.

The Complaints, filed in June and July, 1963, allege that the plaintiffs below are entitled to back pay, according to the prevailing legislation, for work performed from January 1958 to January 1961.

After several interlocutory incidents, and prior to a trial on the merits, petitioner moved for a dismissal of the action on the grounds that the Superior Court of Puerto Rico did not have jurisdiction since all the work on which the claim was based was performed in an area within the exclusive jurisdiction of the United States. The motion was denied by the Superior Court. On certiorari to the Supreme Court of Puerto Rico, said court in case 64-55 upheld on the following grounds:

a) Section 16 of the Fair Labor Standards Act 1938, as amended, 29 U.S.C. 216, authorizes all courts of competent jurisdiction, whether State or Federal, to entertain actions such as this.

b) The claimants, as workers and employees performing work in a naval base of the United States of America, under a contract with a federal contractor, are covered in the first place by the Fair Labor Standards Act of 1938, of the Congress of the United States of America, and also by all local laws which are more beneficial than the provisions of the Fair Labor Standards Act of 1938 of the Congress of the United States of America.

Petitioner's motion for reconsideration was denied on December 23, 1966. On January 9, 1967, the Supreme Court of Puerto Rico entered an amended resolution specifying the names of the justices who had subscribed the resolution denying petitioner's motion for reconsideration.

REASONS FOR GRANTING THE WRIT

Roosevelt Roads was acquired through purchase by the United States of America, pursuant to a law of the Legislature of Puerto Rico, dated February 16,

1903, (Laws of Puerto Rico, page 112).[2] It falls within the exclusive jurisdiction of the United States of America, *Capitol Construction Corporation* v. *Secretary of the Treasury,* 89 PRR .....[3]

It is a well settled principle of law that when the United States acquires exclusive jurisdiction over land purchased for military purposes, the jurisdiction of the state ceases ipso facto and is thus completely ousted. United States Constitution, Article I, Section 8, Clause 17; *United States* v. *Cornell,* 25 Fed. Cas. 646 (No. 14,867) (1819); *Surplus Trading Co.* v. *Cook,* 281 U.S. 647, 50 S. Ct. 455 (1930).

In construing clause 17, Section 8, Article I of the Constitution, Justice Story, the writer of the Court's opinion in *Cornell* stated in his commentaries:

> "The other part of the power, giving exclusive legislation over places ceded for the erection of forts, magazines, etc., seems still more necessary for the public convenience and safety. The public money expended on such places, and the public property deposited in them, and the nature of the military duties that may be required there, all demand that they should be exempted from state authority. In truth, it would be wholly improper, that places in which the security of the entire na-

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[2] Section 5 of said law states that "consent is hereby given to the United States to acquire for naval, military or other public purposes, by purchase, lease or condemnation any lands within the Island of Puerto Rico, and when so acquired and possession thereof shall have been taken, *all jurisdiction over such lands by the people of Puerto Rico shall ipso facto cease and terminate . . .*" [Emphasis ours.]

[3] Decision of the Supreme Court of the Commonwealth of Puerto Rico dated October 28, 1963, not yet reported. Certified copy of said decision is hereby attached, as Appendix C.

> tion may depend, should be subject to the control of any member of it. The power indeed, is wholly unexceptionable; since it can only be exercsied at the will of the state; and therefore it is placed beyond all reasonable scruple." *2 Story, Constitution* Sec. 1224 (1847).

The holding in *Cornell* amounts to a declaration that with respect to areas within the exclusive jurisdiction of the United States, the state's jurisdiction is preempted by the federal government. This doctrine has been consistently followed by the federal courts. *Humble Pipeline Co.* v. *Waggonner,* 376 U.S. 370, 84 S. Ct. 857 (1964); *Pacific Coast Dairies* v. *Department of Agriculture,* 318 U.S. 285, 63 S. Ct. 628; *Standard Oil Co.* v. *People of the State of California,* 291 U.S. 242, 54 S. Ct. 381; *Murray* v. *Joe Gerrick & Co.,* 291 U.S. 315, 54 S. Ct. 432 (1934); *United States* v. *Unzeuta,* 281 U.S. 138, 50 S. Ct. 284 (1930); *James Stewart Co.* v. *Sadrakula,* 309 U.S. 94, 60 S. Ct. 432 (1940); *Paul* v. *United States,* 371 U.S. 245, 83 S. Ct. 426 (1963).

The doctrine has also been followed by State Courts in *Utley* v. *State Industrial Commission,* 176 Okla. 257, 55 P. 2d 764; *Hardin County Bd. of Super.* v. *Kentucky Limousines,* 293 S.W. 2d 239 (Ky., 1956); *Board of Equalization, etc.* v. *General Dynamics Corp.,* 344 S.W. 2d. 489 (Texas, 1961); and by the Commonwealth of Puerto Rico in *Capitol Construction Corp.* v. *Secretary of the Treasury,* supra; and *López* v. *District Court,* 58 P.R.R. 117 (1941).

The decision of the Supreme Court of Puerto Rico imports that Section 216 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) constitutes a cession or

retrogression of jurisdiction by Congress, which would permit the states to take cognizance of any wage claim arising out of construction work performed within an area under the exclusive jurisdiction of the United States. We submit that such interpretation is erroneous.

When Congress has wished to allow the states to exercise jurisdiction within a federal enclave it has specifically so stated through the enactment of special legislation.[4] Thus, in 45 Stat. 54 (1928) Congress acted to allow the applicability of state laws in actions for death or personal injury which occur within a national park or other place subject to the exclusive jurisdiction of the United States.[5] It should be noted that this statute, dealing with retrogression of jurisdiction by Congress in personal injury actions, has been restrictively construed. So, it has been held not to extend to actions arising under a State Workman's Compensation Law.[6]

On the other hand, rights created by Federal statute are enforceable in a state court *whenever its* ordinary jurisdiction, as prescribed by local laws, is appropriate to the occasion and is invoked in conformity with these laws. *Second Employer's Liability Cases,* 233 U.S. 1, 32 S. Ct. 169; *Chaflin* v. *Houseman,* 93 U.S. 130, 23 L. Ed. 833; *Missouri ex Rel. St. Louis B&M R. Co.* v.

[4] 40 U.S.C. 290 authorizes the application of State's Workman's Compensation Laws to buildings and property of the United States. The Buck Act, 4 U.S.C. 104, allows the states to levy certain taxes within a federal enclave.

[5] The Supreme Court of Puerto Rico applied this statute in *Gearheart* v. *Haskell,* 87 PRR 53 (1963), not yet published.

[6] *Murray* v. *Joe Gerrick & Co.,* 291 U.S. 315, 54 S. Ct. 432, supra.

Taylor, 266 U.S. 200, 45 S. Ct. 619. Such was the intention of Congress in enacting Section 16 of the Fair Labor Standards Act.

In its pertinent provisions, Section 16 states:

> "Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

The statute purports only that the action may be maintained in any court of competent jurisdiction having original jurisdiction of the parties and the subject matter, regardless of the amount in controversy and regardless of the question of diversity of citizenship. *Crouse* v. *North American Aviation of Kansas,* D.C. Mo., 68 F. Supp. 934 (1946).

Competent jurisdiction signifies a court of general jurisdiction, whether federal, state, or territorial, *Stewart* v. *Hickman,* D.C. Mo., 36 F. Supp. 861 (1941). The term indicates the intention of Congress that all courts, federal or state, shall have concurrent jurisdiction to hear controversies arising under the Fair Labor Standards Act, thereby leaving the complaining employees to determine the forum in which they wish to litigate their claim. *Stringer* v. *Griffin Grocery Co.,* Tex. Civ. App., 149 S.W. 2d 158 (1941); *Floyd* v. *Dubois Soap Co.,* Ohio App., 38 N.E. 2d 919, reversed 41 N.E. 2d 919, reversed 317 U.S. 598, 63 S. Ct. 159.

It permits a plaintiff to litigate his claim in a federal, state or territorial court having otherwise jurisdiction of the parties and over the subject matter, and being thus competent, by virtue of the law of their

creation, to entertain the action, *Booth* v. *Montgomery Ward Co.*, D.C. Neb., 44 F. Supp. 451 (1942). Competent jurisdiction entails jurisdiction over the parties and the subject matter and state courts may not, under the guise of Section 16 of the act, give extra-territorial effect to the laws of the state where the court sits.

The same concept of territorial jurisdiction is followed by the Supreme Court of Puerto Rico in *Delgado* v. *The Executive Council of Porto Rico,* 7 P.R.R. 401 (1904). In interpreting an act of the Legislature of Puerto Rico regulating the writ of mandamus, the Court stated at page 403:

> "Were it not for the words 'within its jurisdiction' probably this question would not have arisen. It would seem from a careful study of the language of this section that these words were intended to limit the persons, companies, corporations or inferior courts upon whom the writ of mandamus issued by the Supreme Court, or by any one of the district courts, should operate; and had it not been that the district courts, as well as the Supreme Court, were mentioned in the prior part of the section the words 'within its jurisdiction' would not have been necessary, as the jurisdiction of the Supreme Court is coextensive with the Island, *and extends to every place where the statutes of Porto Rico have their force.* In other words, *the territorial jurisdiction of the Supreme Court of Porto Rico is the same as the territorial jurisdiction of the Legislature,* although the district courts are limited to their respective districts." (emphasis added)

All the decisions issued under Section 16 have dealt with work performed within the territorial jurisdiction of the particular state or territory in which the court

sits. Most of them involve the right to remove to the federal courts of a cause of action arising within the state, on the grounds that actions under the Fair Labor Standards Act involve a federal question. Such was the case in *Arthur Goettel, et al.* v. *Glenn Berry's Mfrs., Inc.*, 236 F. Supp. 884, relied upon by the Supreme Court of Puerto Rico in its decision.

It is obvious that Section 16 of the Fair Labor Standards Act goes no further than the Jones Act, (46 U.S.C. 688), or the Federal Employer's Liability Act, (45 U.S.C. 56), in conceding concurrent jurisdiction to the state courts to entertain actions thereunder. Hence the interpretation given to it by the Supreme Court of Puerto Rico that it constitutes a cession or retrogression by the United States of its exclusive territorial jurisdiction is contrary to the intention of Congress and finds no support in any decisions construing such statute.

CONCLUSION

The Supreme Court of Puerto Rico has erred in holding that the laws of the Commonwealth of Puerto Rico are applicable to construction work performed in a naval installation over which the United States has exclusive jurisdiction, and that Section 16 of the Fair Labor Standards Act (29 U.S.C. 216) constitutes a retrogression by Congress of its exclusive jurisdiction over certain federal enclaves. Such decision is contrary to the overwhelming weight of authority in the subject.

PRAYER

Wherefore it is respectfully prayed that the writ of certiorari herein requested be issued and that the judgment of the Supreme Court of the Commonwealth of Puerto Rico in case number 64-55, be reversed.

Respectfully submitted,

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APPENDIX A

Constitution of the United States

ARTICLE I, SECTION 8, CLAUSE 17:

"The Congress shall have power . . .

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. . . ."

STATUTES:

(1) Public Law of 1903, of the Legislature of Puerto Rico, Section 5, as amended, 28 L.P.R.A., Section 45:

"That consent be and is hereby given to the United States to acquire for naval, military or other public purposes, by purchase, lease or condemnation any lands within the Island of Puerto Rico, and when so acquired and posession thereof shall have been taken by the United States, all jurisdiction over such lands by the Commonwealth of Puerto Rico shall ipso facto cease and terminate. Provided, however, That upon the subsequent alienation or the discontinuance of the lease by the United States of any or all lands so acquired, the Commonwealth of Puerto Rico shall again have jurisdiction thereover."

(2) Fair Labor Standards Act, 29 U.S.C. Section 216 (B):

"Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid

minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

(3) The Judiciary Act (28 U.S.C. section 1258):

"§ 1258. Supreme Court of Puerto Rico; appeal; certiorari.

"Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

(1) . . .

(2) . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States."

APPENDIX B

IN THE SUPERIOR COURT OF PUERTO RICO
HUMACAO SECTION

(EXHIBIT III)

Civil No. CS 62-1165

WAGE CLAIM

VICTOR CAMACHO, HECTOR WESTER, ET AL., *Plaintiffs*,

v.

NOLLA, GALIB & COMPANY, *Defendant*.

Resolution

About 400 workers residing in the Commonwealth of Puerto Rico filed wage claims in June and July 1962 against Nolla, Galib and Company on account of certain construction works performed by said company in the naval base at Roosevelt Roads, located in Ensenada, Ceiba, Puerto Rico.

In due time defendant answered the complaints and alleged, among other things, that it paid the plaintiffs at least the salaries to which they were entitled in accordance with the provisions of Mandatory Decrees number 11 and 44, and of any other local laws regulating the construction industry in the Island.

After several incidents, having no bearing in this opinion, a hearing was scheduled for the trial of the cases by order of March 22, 1964. By motion filed on June 15, 1964 defendant asked for the dismissal of the complaints in the captioned actions on the grounds that this court does not have jurisdiction over the matter involved in the cases, in view that the terrains on which the said naval installation sits, are at the present, and were on the dates mentioned in the complaint, under the exclusive jurisdiction of the government of the United States of America and therefore all local legislation is inapplicable to the works per-

formed by defendants during the period referred to in the complaint.

The said motion on lack of jurisdiction was submitted for resolution in the hearing held on June 26, 1964, after the parties appeared represented by their respective attorneys, who argued orally the merits of said defense.

Defendant bases its contention on the case of Capitol Construction Co. v. Secretary of the Treasury, dated October 28, 1963 in which it was held that the terrains for the construction of Ramey Field as well as those of the naval base at Roosevelt Roads were acquired by the Federal Government before 1955, and that, therefore, in accordance with the provisions of Section 5 of Law 16, approved in February 1903 the jurisdiction of the Commonwealth of Puerto Rico ceased since that moment, said jurisdiction belonging exclusively to the United States. The results of said judicial decision was to set aside the imposition of taxes over personal property of a tax-payer whose equipment was located in said terrains with the purpose of constructing several projects related with the national defense. Plaintiffs on the other hand, claim, on the basis of *Gearhart* v. *Haskell,* decision of January 2, 1963, that this Court has jurisdiction to intervene and resolve the instant controversy.

An examination of the laws approved by the Legislature of Puerto Rico and the cases on which the parties rely in support of their respective contentions lead us to determine that this Court has authority and power over the claims of the plaintiffs. The term "Jurisdiction" signifies in Puerto Rico, since sometime ago, merely the power or authority of a Court to consider or decide cases or controversies (Rodríguez v. Registrador 75 DPR 712) in which it was held, quoting with approval Paige v. Sinclair 130 N.E. 177, the following:

> "Jurisdiction is a term of ample significance. It refers to, and defines the power of the Courts. Includes every judicial action having relation with the matter of an action, case, petition, complaint, charge or any other

> proceeding. Includes the power to investigate facts, apply the law, formulate decisions and enter judgments . . . place of trial or (venue) in its modern and local sense refers to and defines the county or territorial area or district within the state in which the cause should be held and adjudged. Generally it refers to geographical subdivisions, is related to the practice or procedure, may be waived and does not refer at all to the jurisdiction of the Courts."

On the other hand, and pursuant to the provisions of Sections 10 and 13 of the Judiciary Act the Superior Court of Puerto Rico has competence over the matter and jurisdiction over the parties in the captioned claims to entertain and resolve the same. Gearheart v. Haskell, supra. And it is so pursuant to the provisions of Article 3 of Law 62 of June 10, 1955 regulating the cession to the United States of jurisdiction over land acquired by the same in the Commonwealth of Puerto Rico, which provides the following:

> "The said jurisdiction shall be understood as being granted upon the express condition that within the lands acquired by the United States arrests originating under the laws of the Commonwealth of Puerto Rico may be made and summonses originating under the said laws may be served. *Also, attachments and such other judicial provisions as the courts of the Commonwealth may decide upon may be executed with regard to properties located on the said lands, provided that neither the properties of the United States, nor the use or benefit which the United States derives from the said properties, nor the purposes for which the lands were acquired, are affected.*"

Possibly, in our opinion, what induces to believe that the Courts of general jurisdiction of the Commonwealth are precluded from entertaining and adjudicating cases such as this, is the fact, definitely acknowledged, that the United States of America have exclusive jurisdiction over the land on which said military or naval installation are located.

But, as held in the case of Gearheart, it is not in issue the condition or status of said military installations or naval bases with respect to the exclusive legislative power of the Congress of the United States over the same. Hence the applicability of the case of Capitol Construction quoted by the defendant, with respect to the specific controversy therein invoked.

We consider convenient to quote, for the bearing that in our opinion it has, the case of Moore v. District Court, 59 P.R.R. 618 in which the Supreme Court of Puerto Rico, quoting the Court below stated:

> "Therefore, we are of the opinion that the jurisdiction of the Government of the United States over the land of Isla Grande where the Naval Base is built, is confined to such jurisdiction as is required in order that the Federal Government may carry out and execute the purposes for which it acquired said land, and that the People of Puerto Rico has been deprived of jurisdiction over said land only in so far as the exercise of such jurisdiction might hinder or obstruct the execution of said federal projects. United States v. Unzeuta, 281 U.S. 138; Ryan v. State, 188 Wash, 115, 61 P. (2d) 1276; Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 29 L. Ed. 264. The jurisdiction of the Federal Government over the land of said Naval Base is not, therefore, exclusive, said land being still subject to the insular jurisdiction."

For the above stated, it is proper to deny, as it is denied, the special defense of lack of jurisdiction raised by defendant in the captioned causes.

Be it registered and notified

Humacao, P. R., July 6, 1964.

(sgd) Jose Davila Ortiz
Superior Judge

IN THE SUPREME COURT OF PUERTO RICO

C-64-55

Certiorari (Wages)

NOLLA, GALIB & Co., *Petitioner*,

v.

SUPERIOR COURT OF PUERTO RICO, HUMACAO PART, JOSÉ DÁVILA ORTIZ, JUDGE, *Respondent*.
GERÓNIMO LEBRÓN *et al.*, *Interveners*.

Division composed of Mr. Justice Emilio S. Belaval, as Chief Judge of Division, Mr. Justice Hernández Matos, Mr. Justice Rigau, and Mr. Justice Ramírez Bages.

Mr. JUSTICE BELAVAL delivered the opinion of the Court.

San Juan, Puerto Rico, June 14, 1966

From January 1958 to January 1962 the interveners worked as laborers and employees in the construction industry for petitioner, a contractor for the construction of several buildings in the Roosevelt Roads Naval Base in Ceiba, Puerto Rico, for the Government of the United States of America.

Alleging that petitioner had not paid in full the wages to which they were entitled, the interveners filed a complaint, according to the special procedure established for said claims, against petitioner in the Superior Court of Puerto Rico, Humacao Part.

Nolla, Galib & Co. filed a motion for dismissal, stating: "(1) According to the pleading in the record, claimants worked for respondent in the construction of certain buildings in Roosevelt Roads Naval Base, under contract between respondent and the Government of the United States. (2) From a painstaking investigation performed by respondent's attorneys on the different factors involved in the acquisition, by the United States Government, of the

lands where the Roosevelt Roads Naval Base is located, respondent has reached the conclusion that this Court lacks jurisdiction over this controversy, it being known that the land on which said naval installation is located is at the present time and was, during the dates involved in the complaint, under the exclusive jurisdiction of the Government of the United States. (3) The acquisition of exclusive jurisdiction by the Government of the United States of America over the land where the Roosevelt Roads Naval Base is located does not only deprive this Court of jurisdiction over this case, but it also excludes the Government of the Commonwealth of Puerto Rico and its predecessor, the Government of Puerto Rico, which, as a question of law, was deprived of territorial jurisdiction over the land of said naval stations, which all amounts to the absolute inapplicability of any local legislation to works performed by respondent in Roosevelt Roads during the time referred to in the complaint. (4) Respondent states that today it has come to the conviction that this motion is proper, for which reason the question of jurisdiction, which is now raised for the first time in this litigation, had not been previously raised; and that respondent also states that this motion is filed in good faith, and not for the purpose of delaying or obstructing the proceedings of this case."

The trial court denied the motion for dismissal and it did so correctly. We are dealing with workers and employees working in a naval base of the United States of America, hired by a constructor of federal works. As such workers and employees of a naval base or military station, they are covered, first, by the Fair Labor Standards Act of 1938 of the Congress of the United States of America, since they are engaged in interstate commerce. *Powell* v. *United States Cartridge Co.,* 339 U.S. 497, 509-514; 94 L. Ed. 1017, 1032-1035 (Burton, 1950); *Mitchell* v. *Lublin McGaughy & Associates,* 358 U.S. 207, 213; 3 L. Ed. 243, 248 (Warren, 1959); *Golberg* v. *Nolla Galib & Cía.,* 291 F.2d 371, 373 (Margruder, 1961); *Wirtz* v. *R. E. Lee Electric Company,* 339 F.2d 686, 689 (Boreman, 1964); second,

by the local laws, whenever the latter are more beneficial than the provisions of the Fair Labor Standards Act of 1938 of the Congress of the United States of America.

As to the court having jurisdiction to entertain this action, it suffices to remember that § 216 of the Fair Labor Standards Act of 1938 authorizes any court with competent jurisdiction, either state or federal: § 216, 29 U.S.C.A. 262, to entertain in the action, *Arthur Goettel et al.* v. *Glenn Berry Mfrs. Inc.*, 236 F. Supp. 884 (Daugherty, 1964).

The writ issued will be annulled and the case remanded to the Superior Court of Puerto Rico, Humacao Part, to proceed with the proceedings in the usual manner.

APPENDIX C

IN THE SUPREME COURT OF PUERTO RICO

R-62-43 Review

CAPITOL CONSTRUCTION CO. *et al., Petitioners-appellees*

v.

SECRETARY OF THE TREASURY, *Respondent-appellant*

Division composed of Mr. Chief Justice Negrón Fernández, Mr. Justice Blanco Lugo, and Mr. Justice Ramírez Bages.

MR. JUSTICE BLANCO LUGO delivered the opinion of the Court. San Juan, Puerto Rico, October 28, 1963

On February 2, 1962 the Superior Court, San Juan Part, rendered judgment sustaining several complaints filed by the corporations Capitol Construction Co. and the Blythe Co. of Puerto Rico, in which they challenged the levying of taxes on certain personal property belonging to petitioners, which at the time of taxation was physically located in the United States of America military bases, Ramey Field and Roosevelt Roads. It stated that the ruling established in *P.R. Drydock, Etc.* v. *Sec. of the Treas.*, 82 P.R.R. 636 (1961), was entirely applicable "in the light of the statements" contained therein, although it admitted that the case of Drydock involved the personal property of a leaseholder of federal land while the present case dealt with property of identical nature belonging to contractors for the construction work. Even when subsequently, on June 22, 1962, 85 P.R.R. 707, we reconsidered the judgment rendered in *Drydock*, it has no bearing on the contentions now raised for our last action merely dealt with the interpretation of the term "alienation" as used in § 5 of the Act of February 16, 1903 (Sess. Laws, p. 111).

The appellees are corporations organized under the laws of the Commonwealth of Puerto Rico, which are engaged in construction work and civil engineering in general, for which they possess construction equipment, furniture, tools

and other accessories. In order to decide the controversy as to the taxable nature of said property, the parties submitted to the trial court a stipulation of facts which insofar as pertinent reads as follows:

"1. That in all the above-entitled cases the facts are the following:

"a. The Commonwealth of Puerto Rico sent to each petitioner receipts notifying them the tax on personal property.

"b. In each case each one of said receipts covered construction light and heavy equipment, accessories and tools which were located at the time of assessment on the United States military bases located in Puerto Rico (Ramy and Roosevelt Roads).

"c. In each case the construction equipment was located on said bases in relation to construction works of landing strips, buildings, hangars, and other military installations therein.

"d. The officials of the Department of the Treasury have examined each of the taxpayer's record and have decided that the personal property in question is located in good faith on said bases in connection with extensive construction projects on said bases; that is, it is not a matter of the taxpayers moving a great part of their equipment within the bases on the date of the assessment in order to avail themselves of a more favorable tax status; rather, practically all the personal property in question was not only located on said military bases on the assessment date, but also practically all said property remained in said bases for long periods of time to carry out the construction work therein.

"e. In none of the above-entitled cases was the taxpayer the owner or the lessee of any part of the lands in said bases where the personal property in question was located.

"2. That in view of the facts stipulated under paragraph '1', subdivisions 'a' to 'e', the sole question to be decided by the court in each one of the said cases is a question of law, namely: Can the Commonwealth of Puerto Rico levy taxes on a taxpayer's personal property which is located in the United States' military bases in Puerto Rico for the purpose of carrying out construction projects on said bases."

The seventeenth clause of § 8 of Article I of the Constitution of the United States confers the power on Congress to exercise the exclusive right of *legislation in all matters whatsoever* concerning all lands purchased with the consent of the legislative power of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other necessary buildings. Although in *Moore* v. *District Court,* 59 P.R.R. 618, 621 (1941), we decided that said clause was not applicable in Puerto Rico, we stated that resort may and should be had to the decisions construing the same, in view of the fact that the local law on the matter—§ 5 of the Act of February 16, 1903 (Sess. Laws, p. 111)—was conceived in similar terms.[1] We can take judicial notice of the fact that the

[1] "That consent be and is hereby given, to the United States to acquire for naval, military or other public purposes, by purchase or condemnation, any lands within the island of Porto Rico, and when so acquired and possession thereof shall have been taken by the United States, all jurisdiction over such lands by the People of Porto Rico shall cease and determine [terminate]; Provided, however, that upon the subsequent alienation by the United States of any land so acquired, the People of Porto Rico shall again have jurisdiction thereover."

Said § 5 was amended by Act No. 2 of November 18, 1953 (Sess. Laws 1954, p. 2), to include the lease of lands by the United States as one of the means by which the jurisdiction of the Commonwealth over such lands, shall ipso facto cease and terminate.

Act No. 63 of June 10, 1955 (Sess. Laws, p. 228), repealed said § 5. The provisions now in force in relation to the grant of jurisdiction to the United States over lands acquired by the latter in the Commonwealth of Puerto Rico are contained in Act No. 62 of June 10, 1955 (28 L.P.R.A. (Supp. 1962)), §§ 54-57.

lands for the construction of Ramey Air Base as well as those for Roosevelt Roads Naval Base were acquired by the federal government prior to 1955, and so, pursuant to the aforecited section, the jurisdiction of the Commonwealth over said land, ceased thereafter, and it is now exclusively in the United States.[2]

As we said in our first opinion in the *Drydock* case, *supra* at p. 640, "The exclusive jurisdiction which the Government of the United States acquires by virtue of clause 17 of § 8, Art. I of the Constitution (in Puerto Rico by virtue of the Act of February 16, 1903) exempts from state taxation property thus acquired and property located on these premises, even though the latter belong to

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[2] The scope of acceptance of jurisdiction by the federal government was not established either, as required by 54 Stat. 19 (1940), 40 U.S.C. § 255, which insofar as pertinent says:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired [February 1, 1940] by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. *Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.*"

See *International Business Machine Corp.* v. *Ott*, 89 So. 2d 193 (La. 1956). *Cf. International Business Machines Corp.* v. *Vaughn*, 98 So. 2d 747 (Fla. 1957).

private institutions and are not [federal] government property." It is not a matter of taxation on federal property or property belonging to an individual taxpayer in which case, perhaps, the problem might be considered in the light of the tendency not to extend federal tax immunity to the entities doing business with the government—but simply of the absence of the state's tax power to reach property located within exclusively federal jurisdiction.

Surplus Trading Co. v. *Cook*, 281 U.S. 647 (1930), is the leading case on this matter. The federal government acquired by purchase certain lands located within limits of the State of Arkansas with the consent of the legislature of the State for the purpose of devoting them to a military camp for the training of troops and the establishment of a supply station. The plaintiff corporation bought from the government certain surplus property—a large quantity of woolen blankets—a few days before the date fixed by the state law for the listing of property for the purpose of taxation. On the date stated the greater part of the blankets was still in the army storehouses within the limits of the camp. In maintaining that said personal property was not subject to the jurisdiction of Arkansas, the following language was cited with approval from *United States* v. *Cornel*, 2 Mason 60: "When therefore a purchase of land for any of these purposes is made by the national government, and the state legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of congress, and the state jurisdiction is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the state legislature is by the very terms of the constitution . . . a virtual surrender and cession of its sovereignty over the place." This doctrine has been consistently ratified by the federal courts. *Standard Oil Co. of Cal.* v. *California*, 291 U.S. 242 (1943); *S.R.A.* v. *Minne-*

sota, 327 U.S. 558, 562-563 (1946); *James Stewart & Co.* v. *Sadrakula*, 309 U.S. 94 (1940); *Hardin County Board of Supervisors* v. *Kentucky Limousines et al.*, 293 S.W. 2d 239 (Ky. 1956); *Board of Equalization, etc.* v. *General Dynamics Corp.*, 344 S.W. 2d 489 (Texas 1961); *International Business Mach. Corp.* v. *Vaughn*, 98 So. 2d 747 (Fla. 1957). *Cf. Wilson* v. *Cook*, 327 U.S. 474, 488 (1946); *Mississippi River Fuel Corporation* v. *Fontenot*, 234 F. 2d 898 (C.C.A. 5, 1956); *International Business Machines Corp.* v. *Evans*, 99 S.E. 2d 220 (Ga. 1957); *E. I Dupont de Nemours & Co.*, v. *State*, 267 P. 2d 667, 673 (Wash. 1954). However, to mitigate the harshness of this doctrine, which incidentally is restrictively applied because it partakes of the characteristic to annul state autonomy in purely local matters, it has been recognized that states have the power to levy taxes—whether property tax, license, excise or income tax—when (1) Congress has so expressly authorized it, like in the classic examples of the Buck Act, 4 U.S.C., § 104, and the Military Leasing Act, 10 U.S.C., § 2667 (e); *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253, 256-257 (1956); *Howard* v. *Commissioner*, 344 U.S. 624 (1953); *cf. Gearheart* v. *Haskell, etc.*, 87 P.R.R. 53 (1963); (2) the federal government has divested itself of the property interests of the lands acquired with the consent of the state, *Commissioner of Sinking Fund* v. *Howard*, 248 S.W. 2d 340 (Ky. 1952);[3] and (3) the state has reserved concurrent jurisdiction over the lands in granting its consent for the acquisition of said lands by the national authorities, *James* v. *Dravo Contracting Co.*, 302 U.S. 134 (1937);

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[3] Section 4 of Act No. 62 of June 10, 1955, 28 L.P.R.A. § 57, contains a provision to the effect that the jurisdiction granted shall continue only while the United States is the proprietor or is in possession of the lands and the lands are used for the naval, military and other public purposes.

Even under the Act of 1903, it provided for the reversion of jurisdiction when the federal government "alienated" the lands.

Arapajolu v. *McMenamin*, 249 P. 2d 318 (Cal. 1952).[4] As may be readily decided from an examination of the former statements of facts, contrary to what occurred in *Drydock*, none of these three circumstances are present in this case. Precisely in *Drydock* we upheld the authority of the Commonwealth to levy taxes on the ground that in leasing a drydock the United States had "alienated" the property and hence, had divested itself from the property interests of the land.

The appellant Secretary acknowledges that a state is not empowered to levy a direct tax on the United States or its property—a principle which stems from the memorable opinion of Mr. Chief Justice Marshall in *M'Culloch* v. *Maryland*, 4 Wheat. 316 (1819), in the days when a solid base for the system of federal government was established—but insists that this immunity of constitutional descent does not exonerate third parties doing business with the United

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[4] Under the law in force—Act No. 62 of June 10, 1955, 28 L.P.R.A. §§ 54-57, the Commonwealth gives its consent for the acquisition of any lands by the United States, but the jurisdiction over said lands shall remain with the Commonwealth of Puerto Rico, except when the cession is granted in the manner provided by § 2 of the Act. Upon previous request by an authorized officer of the federal government (see 40 U.S.C. § 255), the Governor may consent to the cession of jurisdiction subject to the conditions stipulated in § 3—arrests, summonses, and attachments originating under the laws of the Commonwealth may be made, attachments may be executed, and other judicial provisions as the state courts may decide with regard to properties located on said lands, provided the properties of the United States are not affected—"*and whatever other conditions he deems advisable.*" For future cases the retention of the jurisdiction to levy taxes on property or activities of private persons which are located or performed within federal lands thus acquired might well be a convenient condition for the cession of jurisdiction.

By § 6 of the Act of 1903, *supra*, as amended by Act No. 63 of June 10, 1955 (Sess. Laws, p. 228), 28 L.P.R.A. § 46 (Supp. 1962), the Commonwealth shall retain concurrent jurisdiction with the United States over offenses and crimes committed within the limits of the lands so conveyed in the Island of Culebra, under certain conditions.

States merely because part or all of the economic burden eventually falls on the federal government, *James* v. *Dravo Contracting Co.*, 302 U.S. 134 (1937); *Graves* v. *New York*, 306 U.S. 466 (1939); *Alabama* v. *King & Boozer*, 314 U.S. 1 (1941). See, Annotation, *Immunity from state taxation of independent contractors with United States or federal agencies—Supreme Court cases*, 2 L. Ed. 2d 1789 and 96 L. Ed. 263. He further points out that the efficacy of the doctrine of Surplus Trading has been seriously affected by the decisions subsequently rendered in *United States* v. *Detroit*, 355 U.S. 466 (1958); *United States* v. *Township of Muskegon*, 355 U.S. 484 (1958), and *Detroit* v. *Murray Corp.*, 355 U.S. 489 (1958). As we previously pointed out, this appeal does not involve any question properly related to the doctrine of federal tax immunity, but only involves a claim of lack of authority to levy taxes on property located outside the jurisdiction of the Commonwealth. Furthermore, in *United States* v. *Detroit, supra*, the Federal Supreme Court carefully pointed out that it was not a matter of taxation over federal property, but of the privilege to use a definite property for profitable purposes; we find the same situation in *Muskegon;* and in *Murray*, where the tax exemption was claimed alleging that the property taxed belonged to the government. As may be seen a question of jurisdiction to levy taxes was not involved, but even admitting that said cases were applicable, the facts are clearly distinguishable.

In a remarkable effort to support the action of appellant in levying the taxes challenged, it is alleged for the first time in this proceeding that the personal property on which the tax is levied, although "temporarily" located on the federal bases, has its permanent taxable situs in Puerto Rico. The difficulty lies in that we are precluded from exploring this aspect of the matter because the stipulation of facts on which the complaints were submitted makes no reference to such allegation. The briefs submitted by the parties to the trial court were limited to a discussion of the problem from the jurisdictional point of view, thereby corroborating that the question of the tax situs was not con-

sidered in submitting the controversy. Furthermore, this is a question which required the introduction of evidence to enable the court to make an adequate decision as to whether the personal property was temporarily or permanently located on said bases.[5] In relation to the taxable situs see

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[5] It was alleged in the complaints that "petitioner has had during the tax years . . . and in the future expects to have a great amount of its construction equipment and possibly tools, accessories, and furniture in said base . . . *only* for the purpose of performing in said bases . . . works related to the national defense . . . ."

From an examination of the receipts showing the different tax assessments it appears that there was a continuous change in the equipment and machinery used in the execution of contracts, even allowing for annual depreciation.

Capitol Construction Co.

Tax Year	Ramey Field	Roosevelt Roads
1957-58	$ 59,390	$120,810
1958-59	218,500	108,220
1959-60	13,140	144,890
1960-61	2,510	162,780
	Blythe Co. of P.R. Inc.	
1959-60	$ 9,220	$191,880
1960-61	....	93,930

On the other hand, the appellee corporations point out as a significant fact that the receipts were issued as corresponding to the municipality of Aguadilla, where Ramey Base is located, and Ceiba, headquarters of Roosevelt Roads Base. They elaborate the point that this shows that the Secretary attributed a permanent place to the property in the respective federal installations, for otherwise he would have included said equipment and machinery in the municipality where the taxpayers' warehouse is located. Although § 297 of the Political Code, 13 L.P.R.A. § 449 establishes the general rule that "All personal property within or without Puerto Rico shall be assessed to the owner thereof in the municipality in which he resides on the day of January first, except that such personal property . . . shall be assessed to the owner *in the municipality in which it is thus situated;* . . ." said provision refers to natural persons, but not to corporations. The sections applicable as to tax assessment on corporations' personal property are § 317, related to 322, of said legal body, 13 L.P.R.A. §§ 464 and 468.

Sucrs. de Abarca v. *Sec. of the Treasury,* 80 P.R.R. 469 (1958); *Island Neddlework, Inc.* v. *Tax Court,* 65 P.R.R. 685 (1946); *cf. Buscaglia, Treas.* v. *Tax Court,* 68 P.R.R. 839 (1948).

Since the errors assigned were not committed, the judgments rendered by the Superior Court, San Juan Part, on February 2, 1962 will be affirmed.

SECRETARY'S CERTIFICATE

I, Joaquin Berrios, Secretary of the Supreme Court of Puerto Rico, Do HEREBY CERTIFY;

That the foregoing is a true and faithful translation from Spanish into English of the opinion rendered by the Supreme Court of Puerto Rico in the above-entitled case, the original of which, in Spanish, is under my custody in this office.

IN WITNESS WHEREOF and at the request of Jorge Souss, Esq., and upon payment of the corresponding fees in internal revenue stamps, I issue these presents under my hand and the seal of this Supreme Court.

San Juan, Puerto Rico, February 24, 1967.

JOAQUIN BERRIOS
Joaquin Berrios
Secretary of the Supreme Court of Puerto Rico

[SEAL]